

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JANE DOE, by her next friend
David C. Boechler,

Plaintiffs,

v.

Case Number 06-14931-BC
Honorable Thomas L. Ludington

MOREY CHARTER SCHOOLS, EDUCARE, INC.,
WEST MICHIGAN EDUCATION SERVICES,
JAMES CARDON, RALPH CROSSLIN, MICHELLE
PATTON, SCOTT WILLOUGHBY,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION
FOR SUBSTITUTION OF THE ESTATE OF ROBERT SCOTT WILLOUGHBY
FOR DEFENDANT WILLOUGHBY AND DIRECTING THE CLERK
TO MAKE THE SUBSTITUTION

On March 20, 2007, a suggestion of death was filed regarding Defendant Scott Willoughby, stating that he passed away on March 15, 2007. On June 11, 2007, the plaintiff filed a motion for the substitution of the estate of Robert Scott Willoughby for Defendant Willoughby, stating that an estate had been opened for him in Lenawee County Probate Court but that no personal representative had yet been appointed.

Under Federal Rule of Civil Procedure 25(a)(1), the Court may order a substitution for a proper party, upon a suggestion of death and if the death does not extinguish the claims. Generally, in light of 42 U.S.C. § 1988, state statutory law governs the survival of civil actions upon the death of one of the parties. *Robertson v. Wegmann*, 436 U.S. 584, 589-590 (1978). In Michigan, all civil actions survive death. Mich. Comp. Laws § 600.2921.

Here, a suggestion of death was timely filed as to Defendant Willoughby. No party has

suggested that his death extinguished the claims of a violation of 42 U.S.C. § 1983 and of negligence against him. Accordingly, the Court will permit the substitution of the estate of Robert Scott Willoughby for Defendant Willoughby.

Accordingly, it is **ORDERED** that the plaintiff's motion for the substitution of estate of Robert Scott Willoughby for Defendant Willoughby [dkt #46] is **GRANTED**.

It is further **ORDERED** that the Clerk is **DIRECTED** to substitute the estate of Robert Scott Willoughby for Defendant Willoughby.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: June 18, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 18, 2007.

s/Tracy A. Jacobs
TRACY A. JACOBS